

10 APRIL 1947

# INDEX

of

## EXHIBITS

<u>Doc.</u> <u>No.</u>	<u>Def.</u> <u>No.</u>	<u>Pros.</u> <u>No.</u>	<u>Description</u>	<u>For</u> <u>Ident.</u>	<u>In</u> <u>Evidence</u>
127	2425		Independence Declaration of the New Manchu-Mongolian State, dated 18 February 1932 by the Administrative Committee of Northeast		19688
104	2426		The Imperial Enthronement Rescript whereby Pu-Yi, Regent, became Emperor		19696
105	2427		The Imperial Rescript on Japan's Withdrawal from the League of Nations, dated 27 March 1933		19700
57	2428		Final Protocol Between the USSR and Manchukuo, signed 23 March 1935		19702
27	2429		Proclamation on the Establishment of Manchukuo, dated 1 March 1932 and made by the Department of Foreign Affairs of the Manchukuo Government		19703
299	2430		Excerpt from the 1936 Japan-Manchukuo Year Book, setting forth the occupants of leading Manchukuo Government posts in 1935		19711
250-D	2431		MATSUOKA's Speech on 24 February 1933 to the Assembly against Adoption of the Draft Report of the Committee of Nineteen and his Statement why Japan cannot agree and accept it		19712
			<u>MORNING RECESS</u>		19712

# INDEX

of

## EXHIBITS

(cont'd)

<u>Doc. No.</u>	<u>Def. No.</u>	<u>Pros. No.</u>	<u>Description</u>	<u>For Ident.</u>	<u>In Evidence</u>
278	2432		Excerpt from the Japan-Manchukuo Year Book of 1937 re Japan's Policy re the Abolition of extra- territoriality in the New State of Manchukuo		19717
382	2433		Agreement Between the Navigation Bureau at Harbin, Manchukuo and the Navigation Bureau at Amur, USSR, concerning the improvement of Navigation, signed 4 September 1934		19721
489	2434		Speech by Mr. HIROTA as Foreign Minister at the House of Representatives on 21 January 1936 of the proceedings of the 68th Diet Session		19728

10 APRIL 1947

I N D E X  
of  
WITNESSES

Defense' Witnesses

Page

WACHI, Takaji (resumed) 19682  
Cross by Mr. Tavenner (cont'd) 19682  
Redirect by Mr. HAYASHI 19684  
(Witness excused) 19685

MINAMI, Jiro 19731

NOON RECESS

19734

MINAMI, Jiro (resumed) 19735

AFTERNOON RECESS

19747

MINAMI, Jiro (resumed) 19748

(Witness excused) 19748



1 Thursday, 10 April 1947

2 - - -

3  
4 INTERNATIONAL MILITARY TRIBUNAL  
5 FOR THE FAR EAST  
6 Court House of the Tribunal  
7 War Ministry Building  
8 Tokyo, Japan

9 The Tribunal met, pursuant to adjournment,  
10 at 0930.

11 - - -

12 Appearances:

13 For the Tribunal, same as before.

14 For the Prosecution Section, same as before.

15 For the Defense Section, same as before.

16 The Accused:

17 By a majority decision of the Tribunal on 9  
18 April 1947 no further proceedings to be taken on the  
19 Indictment of OKAWA, Shumei at this trial; that he be  
20 kept in custody subject to order by the Supreme  
21 Commander for the Allied Powers; and that future  
22 trial at a later date is not precluded.

23 - - -

24 (English to Japanese and Japanese  
25 to English interpretation was made by the  
Language Section, IMTFE.)



WACHI

CROSS

G  
r  
e  
e  
n  
b  
e  
r  
g  
&  
B  
a  
r  
t  
o  
n

1 MARSHAL OF THE COURT: The International  
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: All the accused are present  
4 except TOGO who is represented by his counsel. We  
5 have a certificate from the surgeon of Sugamo Prison  
6 to the effect that TOGO is too ill to attend the  
7 trial today. The certificate will be recorded and  
8 filed.

9 Mr. Tavenner.

10 - - -

11 T A K A J I W A C H I, called as a witness on be-  
12 half of the defense, resumed the stand and testi-  
13 fied through Japanese interpreters as follows:

14 CROSS EXAMINATION

15 BY MR. TAVENNER (Continued):

16 Q General WACHI, as Court adjourned yesterday,  
17 you told us that no telephone communications were  
18 made between HASHIMOTO and ITAGAKI, DOHIHARA and  
19 ISHIHARA of the Kwantung Army because the secretary  
20 of HASHIMOTO, who was arrested with you as a result  
21 of the October Incident, had told you there had been  
22 no such communication. Now, will you tell us why it  
23 was that your conversation with HASHIMOTO's secretary  
24 related to a conference with ITAGAKI, DOHIHARA and  
25 ISHIHARA of the Kwantung Army and no others?

WACHI

CROSS

1           A    At that time we were confined -- we stayed  
2   at Utsunomiya for fifteen days; and, because we had  
3   ample time at hand, we talked of various matters  
4   from the outbreak of the so-called Manchurian Inci-  
5   dent until that time when we were at Utsunomiya.  
6   And at that time we talked of ISHIHARA, ITAGAKI and  
7   DOHIHARA who were very well known figures, and I  
8   asked the secretary whether these men had had communi-  
9   cation by letter, by telephone or by other means  
10   with HASHIMOTO. The secretary replied that he was  
11   not aware of any contract -- communication between  
12   the three mentioned: ISHIHARA, ITAGAKI and DOHIHARA,  
13   and he doubted very much they were in negotiations.  
14   He stated that there were no communications between  
15   HASHIMOTO and the three mentioned.

16           Q    So you are the one who suggested that there  
17   may have been some communication between HASHIMOTO  
18   and these three persons of the Kwantung Army.

19           A    I asked the question.

20           Q    And your question only related to those  
21   three leaders of the Kwantung Army.

22           A    Yes.

23           MR. TAVENNER: I have no further questions,  
24   your Honor.

25           THE PRESIDENT: Counsellor HAYASHI.

WACHI

REDIRECT

## REDIRECT EXAMINATION

1 BY MR. HAYASHI:

2 Q Mr. Witness, yesterday in answer for Mr.  
3 Tavenner's question you answered there was con-  
4 nection between the Sakura-kai Association and  
5 the October Incident. What sort of relation did  
6 the Sakura-kai Association have with the October  
7 Incident?

8 A The Sakura-kai as a whole had no connection  
9 whatsoever with the October Incident. However,  
10 several persons of those who were arrested in con-  
11 nection with the October Incident were members of  
12 the Sakura-kai. Therefore, in that respect, there  
13 may have been relations between the two.

14 Q Mr. TANAKA, Kiyose, concerning whom Mr.  
15 Tavenner asked questions yesterday, what was his  
16 rank at the time of the October Incident?

17 A I believe he was a Captain.

18 Q Was he in any way related with the October  
19 Incident?

20 THE MONITOR: Did he have anything to do  
21 with the October Incident?

22 A He had no connection -- relations with the  
23 Incident.

24 Q Were you ever told that TANAKA, Kiyose,  
25 was in any way connected with the March Incident?



WACHI

REDIRECT

1 A No, I have not heard of that.

2 Q Was TANAKA a leading member of the Sakura-  
3 Kai Association?

4 A He was not an important member.

5 MR. HAYASHI: This concludes my redirect  
6 examination.

7 I should like to have this witness called  
8 to the court in the China phase, and may the witness  
9 leave the court, your Honor?

10 THE PRESIDENT: He is at liberty on the  
11 usual terms.

12 (Whereupon, the witness was  
13 excused.)

14 MR. HAYASHI: Mr. Brooks will take charge  
15 of the Manchurian Incident, continuing this case.

16 THE PRESIDENT: Captain Brooks.

17 MR. BROOKS: Mr. President, Mr. OKAMOTO  
18 will present the next documents in the following two  
19 sections, sections three and sections four of this  
20 sub-division.

21 THE PRESIDENT: Mr. OKAMOTO.

22 MR. T. OKAMOTO: Mr. President and Members  
23 of the Tribunal, we now present the sub-division  
24 dealing with the independent status of Manchukuo and  
25 problems subsequent thereto.

1 We now offer defense document 127 in evi-  
2 dence. It is the Independence Declaration of the  
3 New Manchu-Mongolian state, dated February 18, 1932,  
4 by the administrative committee of the Northeast,

5 THE PRESIDENT: Brigadier Nolan.

6 BRIGADIER NOLAN: If it please the Tribunal,  
7 the prosecution objects to this document. It is  
8 entitled "Independence Declaration of the new Manchu-  
9 Mongolian state," but an examination of the document  
10 itself would indicate that it hardly deserves that  
11 title. So far as I am able to gather, it is a plan  
12 for administrative reform formulated by a committee  
13 known as the Administrative Committee of the North-  
14 east and appealing for support for that program.

15 I have not seen a certificate of origin or  
16 authenticity, but the prosecution objects to the  
17 document on the ground that it adds nothing to the  
18 proceedings except length and should be excluded  
19 particularly because, on the order of proof for to-  
20 day, there is another document known as "The Proc-  
21 lamation of Establishment of Manchuria," dated 1st  
22 of March, 1938.

23 THE MONITOR: 1932. Correct it, please.

24 THE PRESIDENT: This is dated ten days  
25 earlier, the 18th of February, 1932. It could be

1 anything from the genuine declaration to the mere  
2 ravings of a lunatic.

3 MR. T. OKAMOTO: We desire to read the  
4 marked excerpts into evidence to show the manner of  
5 organization of this committee, the desire of inde-  
6 pendence and for separation from the National Party  
7 Government and the reasons therefor, also the purpose  
8 and policy adopted as basic in this Independence  
9 Declaration.

10 THE PRESIDENT: I refer to page 93 of the  
11 Lytton Report, the second paragraph. Is this docu-  
12 ment the Declaration of Independence referred to on  
13 page 93?

14 MR. T. OKAMOTO: That is right.

15 THE PRESIDENT: Does it add anything to  
16 what appears at page 93?

17 MR. T. OKAMOTO: I should like to submit  
18 to the Court the names of the people who made such  
19 declaration and also the manner in which such dec-  
20 laration was presented.

21 THE PRESIDENT: Where did you get it?

22 MR. T. OKAMOTO: Does your Honor wish to  
23 inspect the original? On the original there is a  
24 certificate of source and authenticity. I will read  
25 it.



1 anything from the genuine declaration to the mere  
2 ravings of a lunatic.

3 MR. T. OKAMOTO: We desire to read the  
4 marked excerpts into evidence to show the manner of  
5 organization of this committee, the desire of inde-  
6 pendence and for separation from the National Party  
7 Government and the reasons therefor, also the purpose  
8 and policy adopted as basic in this Independence  
9 Declaration.

10 THE PRESIDENT: I refer to page 93 of the  
11 Lytton Report, the second paragraph. Is this docu-  
12 ment the Declaration of Independence referred to on  
13 page 93?

14 MR. T. OKAMOTO: That is right.

15 THE PRESIDENT: Does it add anything to  
16 what appears at page 93?

17 MR. T. OKAMOTO: I should like to submit  
18 to the Court the names of the people who made such  
19 declaration and also the manner in which such dec-  
20 laration was presented.

21 THE PRESIDENT: Where did you get it?

22 MR. T. OKAMOTO: Does your Honor wish to  
23 inspect the original? On the original there is a  
24 certificate of source and authenticity. I will read  
25 it.

1 anything from the genuine declaration to the mere  
2 ravings of a lunatic.

3 MR. T. OKAMOTO: We desire to read the  
4 marked excerpts into evidence to show the manner of  
5 organization of this committee, the desire of inde-  
6 pendence and for separation from the National Party  
7 Government and the reasons therefor, also the purpose  
8 and policy adopted as basic in this Independence  
9 Declaration.

10 THE PRESIDENT: I refer to page 93 of the  
11 Lytton Report, the second paragraph. Is this docu-  
12 ment the Declaration of Independence referred to on  
13 page 93?

14 MR. T. OKAMOTO: That is right.

15 THE PRESIDENT: Does it add anything to  
16 what appears at page 93?

17 MR. T. OKAMOTO: I should like to submit  
18 to the Court the names of the people who made such  
19 declaration and also the manner in which such dec-  
20 laration was presented.

21 THE PRESIDENT: Where did you get it?

22 MR. T. OKAMOTO: Does your Honor wish to  
23 inspect the original? On the original there is a  
24 certificate of source and authenticity. I will read  
25 it.

1 "I, NAKAGAWA, Toru, Chief of Continental  
2 Affairs Section, Japanese Overseas Residents Divi-  
3 sion, Control Bureau of the Japanese Foreign Office,  
4 hereby certify that the document in Japanese hereto  
5 attached consisting 3 pages and entitled 'Independ-  
6 ence Declaration of the New Manchu-Mongolian State,'  
7 is an exact and true copy from a pamphlet entitled  
8 'Spirit of Foundation of Empire -- Collection of  
9 Documents in Japanese language' issued by the Central  
10 Headquarters of the Concordia Society of Manchukuo.

11 "Signed at Tokyo on this 12th day of  
12 August, 1946." Signature of the officer.

13 THE PRESIDENT: In the future, our copy  
14 should include the certificate.

15 MR. T. OKAMOTO: I am sorry, your Honor.

16 THE PRESIDENT: By a majority, the document  
17 is admitted on the usual terms.

18 CLERK OF THE COURT: Defense document No.  
19 127 is given exhibit No. 2425.

20 (Whereupon, the document above re-  
21 ferred to was marked defense exhibit No.  
22 2425 and received in evidence.)

23 MR. T. OKAMOTO: I now read four paragraphs,  
24 starting with paragraph two, page 1 of defense docu-  
25 ment 127, exhibit 2425:



1 "We, Ching-hui (Translator's Note: Chang  
2 Ching-hui calls himself by the first name in oriental  
3 manner) and the others, had the honor to be elected  
4 as leaders of the provinces and the district. Dis-  
5 carding the old and starting anew, we hope not to  
6 evade our responsibilities by transferring them to  
7 others.

8 "When we assembled here to confer together  
9 on the foundation of our policies, all of us said  
10 unanimously, 'Without a solid organization we would  
11 not be able to manage the whole situation. Unless  
12 we act on the basis of the general will of the people,  
13 we would not be able to establish our new policy.'  
14 Accordingly, we established a new organization which  
15 consists of four provinces of the Northeast, one  
16 special administrative district, and the districts  
17 of the Kings and Princes of Mongolia, and named it  
18 the Administrative Committee of the Northeast. As  
19 soon as it was established, we dispatched official  
20 telegrams to all the internal and external authori-  
21 ties.

22 "Now, the four provinces and the district  
23 of the Northeast have established their independence  
24 completely, and have completed their separation from  
25 the National Party Government. With spirit of inde-

1 pendency afresh we should endeavor to plan adminis-  
2 trative reforms.

3 "Now we remember the time when the warlords  
4 misruled this country and extorted the people arbi-  
5 trarily for which reason the people felt as though  
6 they were in a fire or in deep water, a condition  
7 whereby they were not even able to protect their  
8 very lives. Even now, although tears that were shed  
9 throughout the country are not yet dried, they  
10 (Translator's Note: that is, bandits and the like)  
11 still retain their power comparable to the claws and  
12 fangs of tigers and wolves. We must be ready there-  
13 fore to completely eradicate them so that these  
14 'branches and twigs' may not be able to spread and  
15 prevail."

16  
17  
18  
19  
20  
21  
22  
23  
24  
25

D  
u  
d  
a  
&  
W  
h  
a  
l  
e  
n

1 I skip to the third line on the bottom of  
2 page 2 and read to the end of the 2d sentence on the  
3 next paragraph.

4 "In this spirit, we heartily desire not to  
5 hold anti-foreign policies, to cease international  
6 conflicts, to have the open door anew, and with the  
7 principle of equal opportunity to live and prosper  
8 together with the peoples of the world.

9 "This is the second of the appointed tasks  
10 of this Committee. To secure domestic peace, and to  
11 enter into amicable relations with other nations is  
12 the foundation of government."

13 I now read the next two paragraphs on page 3.

14 "Accordingly, we should encourage and stimu-  
15 late every branch of business, promote farming and  
16 commerce, gradually increase those who earn their living  
17 for themselves, decrease the number of the unemployed,  
18 thus sharing the returns of society, and then con-  
19 flicts between classes will disappear of themselves.  
20 In this manner shall we avoid communization and secure  
21 our democratic policies. This is the third of the  
22 appointed tasks of this Committee.

23 "For the achievement of these three missions,  
24 we, Ching-hui and the others hereon have organized  
25 this Committee, in order to secure happiness for the



1 sake of the people in the four provinces and the  
2 district in the North East. This again, we believe is  
3 based on our desire to secure happiness for the various  
4 people of all East Asia."

5 We now offer defense document 189 and desire  
6 to read only the marked excerpts on pages 9 to 10, and  
7 on pages 21 to 24 into evidence. It is the observa-  
8 tions of the Japanese Government on the establishment  
9 of Manchukuo and sets out wherein the Lytton Report  
10 is very far from being in accordance with the facts  
11 and where the commission appears to have entirely left  
12 out of sight certain information supplied them and  
13 points out other additional information that was not  
14 elaborated on at the time.

15 BRIGADIER NOLAN: If it please the Tribunal--

16 THE PRESIDENT: Brigadier Nolan.

17 BRIGADIER NOLAN: This document, Mr. President,  
18 at page 18,765 of the record was rejected by the Tri-  
19 bunal in these words. I quote it: "The Tribunal  
20 thinks that this document which has just been tendered  
21 contains practically nothing but argument." And at the  
22 bottom of that page the objection is upheld and the  
23 document rejected.

24 MR. T. OKAMOTO: May I say a few words on  
25 that point?

1 THE PRESIDENT: You may.

2 MR. T. OKAMOTO: It is quite true that this  
3 document was rejected once on the ground that it con-  
4 tained nothing but argument. However, we respectfully  
5 submit that there are statements of fact, even quo-  
6 tations of evidence, such as, firstly, on page 9, the  
7 last sentence of the third paragraph, stating that in  
8 his declaration of May 1922 Chang Tso-lin expressly  
9 says that the North Eastern Provinces are not recog-  
10 nized as territories of the Republic of China,--

11 THE PRESIDENT: It so happens that that particu-  
12 lar statement is not marked in our copies.

13 MR. T. OKAMOTO. I am sorry, I did not mark  
14 it. I had no time to correct the marking this morning.

15 And further it quotes as a footnote his tele-  
16 gram addressed to all foreign ministers and consuls  
17 in Peking and Tientsin.

18 THE PRESIDENT: If you have marked all the  
19 statements of fact we may take a different view.  
20 There apparently are some statements of fact, and you  
21 are tendering only those. Can you prove those state-  
22 ments otherwise than by tendering this document, or  
23 parts of it? Why tender forty pages of single space  
24 typing to prove a few statements of fact?

25 MR. T. OKAMOTO: I understand, your Honor,

1 author knew to be so.

2 The prosecution objects to this document on  
3 the ground that we have objected to excerpts from  
4 writings of a like character containing as they do  
5 the particular and personal opinions of the author.

6 THE PRESIDENT: By a majority the Court  
7 upholds the objection and rejects the document.  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



1 that this kind of evidence cannot be found in any  
2 other varieties of documents now in our possession.

3 May I also call the attention of the Tribunal--

4 THE PRESIDENT: By a majority the Court re-  
5 jects the document and upholds the objection.

6 MR. T. OKAMOTO: We now offer in evidence  
7 defense document 177.

8 THE PRESIDENT: Apparently there is no ob-  
9 jection.

10 MR. T. OKAMOTO: These excerpts are from  
11 Sir Reginald Johnston's book entitled "Twilight in  
12 the Forbidden City," and he refers on page 262 to the  
13 Lytton Report statement that the Manchurian--

14 THE PRESIDENT: Brigadier Nolan.

15 BRIGADIER NOLAN: I think I should object  
16 at this point otherwise the document will be in the  
17 record in its entirety.

18 This document commences by setting out what  
19 might have happened if certain other things which  
20 didn't happen had happened, as will be demonstrated  
21 by looking at the first five lines of the first page  
22 of the document. It then goes on to discuss the  
23 Lytton Report by a statement quoting an excerpt from  
24 page 262 which begins: "Knowing this to be so, I have  
25 found it difficult--" there is no indication what the

1 MR. T. OKAMOTO: We now offer defense docu-  
2 ment 104 in evidence. It is the Imperial Enthronement  
3 Rescript whereby Pu-Yi, Regent, became Emperor, and  
4 setting forth his observations thereon and reasons  
5 therefor as will be connected up with other evidence  
6 to show voluntarily he acted in administrative  
7 matters and that he requested advice and assistance but  
8 did not take direction or orders from anyone.

9 THE PRESIDENT: Admitted on the usual terms.

10 CLERK OF THE COURT: Defense document 104  
11 will receive exhibit No. 2426.

12 (Whereupon, the document above  
13 referred to was marked defense exhibit  
14 No. 2426 and received in evidence.)

15 MR. T. OKAMOTO: I now read exhibit 2426.

16 "We, the Emperor divinely enthroned from  
17 Heaven, would proclaim thus: Two years have elapsed  
18 since Our country entitled Manchou, was founded on a  
19 basis of benevolent government and fair dealing with  
20 our friendly neighbors. In its early days we  
21 suffered from the lawlessness and ravenousness of bandits  
22 who were bent on a life of ease and comfort evading  
23 military service. The good people, in spite of their  
24 ardent cry for Heaven's help, could not stand on their  
25 own feet. At this juncture the Japanese Empire,



disregarding the suspicions and adverse criticisms from the rest of the world, came forward to Our aid. Thanks to Japan's unprecedented services rendered in Our behalf, we have seen the more serious problems solved all but completely.

"Heaven has most graciously empowered Us to reign over the country. Peasants have pledged their loyalty to Us and war refugees have gradually returned to their homes. Popular voices are freely raised and public opinion formed. The internal disturbances have been largely suppressed. Prospects are now as brilliant as the dawn of day.

"Know ye, Our subjects: Heaven is by no means partial in dealing with men. Heaven helps only the virtuous. There is a will on the part of the people; without a master, however, they are easily thrown into a state of confusion. The people, therefore, are appealing for a right person for the throne. And every one consulted expressed his hearty approval. How could we hesitate to obey the divine call? On this first day of the third month of the third year of Tai T'ung do we ascend the Throne, changing the era to K'ang Te, which commences on this date. Our country shall now be renamed Manchoukuo. Nevertheless, internal disturbances might yet arise at any moment.



How should we remain inactive at such a critical moment?

1        "As for the measures and policies of defense  
2 and administration of Our country, we will cooperate  
3 in perfect accord with the Japanese Empire and can  
4 confidently hope for everlasting national security.  
5 The clauses of the body of laws governing the state and  
6 the treaties concluded shall remain substantially  
7 unchanged.

8        "Although there are several races and tribes  
9 residing within our boundaries, let us, with an open  
10 mind, endeavor to respect our common interests.

11        "Know ye, Our subjects: The truth of these  
12 words of Ours is self-evident like the rising sun. It  
13 is Our wish that ye would faithfully conform to every  
14 word of Our Rescript."

15        We now offer defense document 131, and desire  
16 to read the marked excerpts into evidence.

17        THE PRESIDENT: What are they?

18        MR. T. OKAMOTO: This document is a speech of  
19 MATSUOKA, Japanese chief delegate at the League of  
20 Nations. The speech was made at the League Council on  
21 November 21, 1932. The text is taken from a collection  
22 of documents relating to the League of Nations dated  
23 December 1932. The speech points out where further study  
24 and evidence needs submission and should be of value to  
25

1 the Tribunal in determining the value of such addi-  
2 tional evidence as was not before the commission.

3 THE PRESIDENT: Brigadier Nolan.

4 BRIGADIER NOLAN: The prosecution objects to  
5 defense document No. 131. It is a recapitulation of  
6 the argument of the Japanese Government against the  
7 Lytton Report. It refers to the observations of the  
8 Japanese Government which were contained in defense  
9 document 189, which has been rejected by the Tribunal.  
10 We ask the Tribunal to reject document 131 upon the  
11 same grounds.

12 MR. T. OKAMOTO: May I call the attention  
13 of the Tribunal to page 6, the third paragraph from  
14 the bottom, where there is a statement that "Both  
15 Baron Shidehara, our Minister of Foreign Affairs, and  
16 General Minami, Minister of War, issued telegraphic  
17 instructions on September 26, forbidding participa-  
18 tion by Japanese military and civil officials and  
19 other Japanese in the various attempts already being  
20 made to establish a new political order in Manchuria."

21 THE PRESIDENT: Isn't there other evidence  
22 of that?

23 MR. T. OKAMOTO: In view of the impossibility  
24 of obtaining the original instructions of SHIDEHARA  
25 and MINAMI, and inasmuch as this speech is an

1 authentic announcement of the Japanese Government at  
2 the League of Nations, we have to offer this document  
3 as the second best evidence of the policy and attitude  
4 of the Japanese Government at that time.

5 THE PRESIDENT: By a majority, the Court  
6 upholds the objection and rejects the document.

7 MR. T. OKAMOTO: We now offer defense  
8 document 105. It is the Imperial Rescript on Japan's  
9 withdrawal from the League of Nations, dated 27 March  
10 1933. This excerpt shows that respect for the indepen-  
11 dence of Manchukuo was deemed essential to world peace  
12 and that Japan's obligations under treaty to the new  
13 state were one cause of her withdrawal from the League.

14 THE PRESIDENT: Admitted on the usual terms.

15 CLERK OF THE COURT: Defense document 105  
16 will receive exhibit No. 2427.

17 (Whereupon, the document above  
18 referred to was marked defense exhibit  
19 No. 2427 and received in evidence.)

20 MR. T. OKAMOTO: I now read paragraph 2  
21 on page 1 of exhibit 2427.

22 "Now relative to newly arisen Manchoukuo,  
23 Our Empire deems it essential to respect the indepen-  
24 dence of the new state and to encourage its healthy  
25 development, in order that the sources of evil in the



1 Far East may be eradicated and thus form a foundation  
2 for world peace. Unfortunately, however, there exists  
3 a wide divergence of view in this regard between Our  
4 Empire and the League of Nations and it has devolved  
5 upon us to cause Our government to take, upon mature  
6 deliberation, the necessary steps for our withdrawal  
7 from the League."

S  
p  
r  
a  
t  
t  
&  
Y  
e  
l  
d  
e  
n

1 We now offer defense document 57 into  
2 evidence. This is the final protocol between the  
3 USSR and Manchukuo signed March 23, 1935, and shows  
4 defacto recognition of Manchukuo by Russia.

5 THE PRESIDENT: Admitted on the usual  
6 terms.

7 CLERK OF THE COURT: Defense document 57  
8 will receive exhibit No. 2428.

9 (Whereupon, the document above  
10 referred to was marked defense exhibit  
11 No. 2428 and received in evidence.)

12 IR. T. OKAMOTO: I desire to read only  
13 article 2 into evidence.

14 "The stipulation of Article 5 of the  
15 Agreement concerning the property which is to be  
16 placed under the occupation and management of the  
17 community of the citizens of the Union of Soviet  
18 Socialist Republics in Harbin shall not in any way  
19 preclude the application of the law of Manchoukuo  
20 as to the said property, its occupation and manage-  
21 ment."

22 We now offer defense document 27 into  
23 evidence. It is the proclamation on the Establish-  
24 ment of Manchukuo dated March 1, 1932, and made by  
25 the Department of Foreign Affairs of the Manchukuo

1 Government.

2 THE PRESIDENT: Admitted on the usual terms.

3 CLERK OF THE COURT: Defense document No. 27  
4 will receive exhibit No. 2429.

5 (Whereupon, the document above  
6 referred to was marked defense exhibit  
7 No. 2429 and received in evidence.)  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



MR. T. OKAMOTO: I now read exhibit 2429:

1           "The territories of Manchuria and Mongolia  
2 form a region remote and isolated on the Continent of  
3 Asia. The records of the past show that its history  
4 is a long one; that the country experienced unions  
5 and disunions within its borders; and that the soil  
6 of the land is fertile and the people honest and  
7 simple in their manners and customs. After the  
8 country was opened to intercourse with outside  
9 countries the population increased in numbers and  
10 the products in volume, thus turning the country  
11 into a land of abundance and promise.  
12

13           "On the contrary, since the establishment  
14 of the Chinese Republic following the revolution of  
15 1911, the military factions of the Northeastern  
16 Provinces, taking advantage of civil wars in China  
17 Proper, usurped its administrative power, and brought  
18 the Three Eastern Provinces under their control.  
19 Twenty years have elapsed since the revolution,  
20 during which time one warlord had succeeded another,  
21 each of whom, completely disregarding the welfare of  
22 the people, indulged himself in greed, extravagance  
23 and dissipation. While they were bent upon the  
24 pursuit of their self-interest and cupidity, the people,  
25 on the other hand, were burdened with over-taxation at

1 the will of the warlords. As a result the currency  
2 system witnessed complete ruin, and the business of  
3 the country became stagnant and finally collapsed.

4 "At this critical time, again, the warlords,  
5 giving rein to their ambition, advanced their army  
6 into the country south of the Great Wall, and caused  
7 unnecessary strife, killing and wounding a large  
8 number of people. Although they suffered defeat  
9 many a time, they never realized their own folly;  
10 they have lost the confidence and respect of the  
11 foreign powers. They waged wars with neighboring  
12 countries; and with utter disregard to the spirit  
13 of friendliness and cordiality towards foreign  
14 countries, they encouraged anti-foreign movements.

15 "The laxity in the police administration  
16 caused disturbances in the country and gave rise to  
17 ravages by thieves and bandits. Acts of looting,  
18 arson and massacre by these lawless elements terrified  
19 the entire population and exposed them to hunger in  
20 all corners of the country. To leave these thirty  
21 million people of Manchuria and Mongolia further in  
22 their hands within the border would have meant their  
23 exposure to atrocity and lawlessness and finally to  
24 their extinction. The people earnestly desire to  
25 extricate themselves from this extreme danger and



1 sorrow. Happily, through the aid of the army of  
2 a neighbor power, it has been possible to expel these  
3 corrupt elements from the area where they had en-  
4 trenced themselves for many years past. The home of  
5 misrule and corruption is thus now being given a  
6 thorough cleaning. This we believe is a Heaven-sent  
7 opportunity to the people of Manchuria and Mongolia  
8 to shake off their shackles, who should, therefore,  
9 rise to the occasion and strive for regeneration  
10 and rebirth with courage and determination.

11 "Turning our eyes to China Proper we note  
12 that the rival warlords have engaged in intermittent  
13 warfare ever since the revolution took place. Of  
14 late years despotic rule over the country was exer-  
15 cised by one party alone. Under the guise of the  
16 "Three Principles of the People," the people are put  
17 to death in the name of Minsheng (that is, welfare  
18 of the people); their leaders are bent only upon  
19 promoting their own interests and indulging in their  
20 greed in the name of Min-chuan (that is, right of  
21 the people); and in their eyes there is nothing outside  
22 their own party although they profess the principle  
23 of Min-tsu (that is, government of the people). In  
24 this manner, though they declare that the country is  
25 ruled with fairness and equality, the practice of the



1 party leaders is in utter contradiction to what they  
2 profess, thus not only deceiving themselves but the  
3 people at the same time.

4 "Of late years, internal strifes caused  
5 by illegal partitioning of one another's territory have  
6 been frequent in China Proper. Even the existence of  
7 the Kuomintang party itself is now in danger. In  
8 these circumstances, it is impossible to expect from  
9 them any regard for national welfare. The country  
10 is at present overrun by Communist bands whose poison-  
11 ous influences are fast eating into the flesh of the  
12 people and the very heart of the national government.  
13 In the face of these deplorable conditions we are  
14 compelled to look to the days of the golden age of  
15 our history. It should be noted that this feeling of  
16 ours is equally shared by friendly nations abroad.

17 "The result of twenty long years' experiences  
18 has convincingly taught us that we must bravely face  
19 the realities and take upon ourselves the task of re-  
20 forming our national life and of bringing about a  
21 new golden age. The fact must be borne in mind,  
22 however, that evil influences are still with us, and  
23 should we evade the issue at this time and fail to  
24 check the spread of Communism, it is obvious that the  
25 destruction of the nation is inevitable. In this hour

1 of crisis unless the people of Manchuria and Mongolia  
2 awake to realization of the Heaven-given opportune call  
3 to liberate themselves from this corrupt political  
4 state, their extinction, too, will have to be faced.

5 "After thorough deliberations for several  
6 months past at numerous meetings the leaders of Feng-  
7 tien, Kirin, Heilungkiang and Jehol Provinces, Harbin  
8 Special District, and those under various banners of  
9 Mongolia, have come to a unanimous conclusion to  
10 adopt a practical application of good rule rather  
11 than a display of words in the administration of  
12 State affairs. Under whatever form of government, the  
13 primary duty of the State is to assure the inhabitants  
14 peace and security.

15 "Manchuria and Mongolia constituted in the  
16 past a separate State detached from China Proper. The  
17 present situation places us in a position to strive  
18 for our own national independence. Accordingly, by  
19 the will of the thirty million people, we hereby declare  
20 on this day that we sever our relations with the Repub-  
21 lic of China and establish the State of Manchuria, and  
22 we hereby make a public proclamation of the fundamental  
23 principles on which this new State is founded.

24 "1. We believe that statecraft should be  
25 founded upon the principle of Tao or the Way, and Tao

1 founded upon Tien or Heaven. The principle on which  
2 this new State is based is to follow Tien or Heaven  
3 that the people may have peace and security. The  
4 government must be approved by the people and no  
5 man's personal views shall be permitted to influence  
6 the affairs of the State.

7 "2. There shall be no discrimination with  
8 respect to race and caste among those people who now  
9 reside within the territory of the new State. Be-  
10 sides the races of the Hans, Manchus, Mongols,  
11 Japanese and Koreans, the peoples of other foreign  
12 countries may upon application have their rights  
13 guaranteed.

14 "3. In internal affairs the new State will  
15 reject the policies adopted in the dark days of the  
16 past. It will revise laws and enforce local autonomy,  
17 draft able men into the service of the government and  
18 elevate the officials deserving promotion, encourage  
19 industry, unify the currency system, open up the  
20 natural resources of the country, endeavor to maintain  
21 a good standard of living for the people, adjust and  
22 regulate the administration of the police, eliminate  
23 banditry, and promote and popularize education,  
24 respect Li-chiao, the teachings of Confucianism, and  
25 apply the principle of Wang-tao, the Way of Benevolent



1 Ruler, and practice its teachings. These, we believe  
2 will enlighten the people to maintain the honor of  
3 perpetuating the peace of the Far East and thus set  
4 an example of model government to the world.

5 "4. The foreign policy of the new State  
6 shall be to seek and further promote cordial relations  
7 with foreign powers by winning their confidence and  
8 respect, and to observe strictly international con-  
9 ventions. Financial obligations incurred within the  
10 territory of Manchuria by treaty stipulations with  
11 various countries prior to the establishment of the  
12 new State shall be met according to the usual inter-  
13 national conventions. Foreign investments by any  
14 nation shall be welcomed for the furtherance of trade  
15 and the exploitation of natural resources, thus  
16 bringing the principles of the Open Door and Equal  
17 Opportunity and the like to a fuller realization.

18 "The foregoing articles constitute the  
19 fundamental principles underlying the establishment  
20 of the new State. The newly-formed Government will  
21 bear all responsibilities thereof from the day of the  
22 creation of the new State and the Government hereby  
23 pledges upon oath to the thirty million inhabitants  
24 that these shall be faithfully carried out."  
25

1 We now offer defense document 299 into  
2 evidence. This is an excerpt from 1936 Japan-  
3 Manchukuo Year Book and sets forth the occupants  
4 of leading Manchukuo government posts in 1935.

5 We do not intend to read it but offer it  
6 for the Tribunal's use in following certain in-  
7 dividual careers of parties named in other exhibits  
8 and to show the representation of the five races of  
9 people in Manchukuo.

10 THE PRESIDENT: Admitted on the usual terms.

11 CLERK OF THE COURT: Defense document  
12 No. 299 will receive exhibit No. 2430.

13 (Whereupon, the document above  
14 referred to was marked defense exhibit  
15 No. 2430 and received in evidence.)

16 MR. T. OKAMOTO: We now offer defense docu-  
17 ment 250-D into evidence. It is MATSUOKA's speech  
18 of February 24, 1933, to the assembly against adoption  
19 of the draft report of the committee of nineteen and  
20 his statement why Japan cannot agree and accept it.

21 THE PRESIDENT: Admitted on the usual terms.

22 MR. T. OKAMOTO: Particularly, I would like  
23 to call to the attention of the Tribunal item 5 on  
24 page 2 and item 15 on page 6, which are statements  
25 of fact.

1 CLERK OF THE COURT: Defense document  
2 No. 250-D will receive exhibit No. 2431.

3 (Whereupon, the document above  
4 referred to was marked defense exhibit  
5 No. 2431 and received in evidence.)

6 THE PRESIDENT: Do you propose to read  
7 any part of it?

8 MR. T. OKAMOTO: I just pointed out  
9 paragraph 5 on page 2 and also 15 on page 6. I was  
10 interrupted. I haven't had time, your Honor.

11 THE PRESIDENT: We will recess for fifteen  
12 minutes.

13 (Whereupon, at 1045, a recess was  
14 taken until 1100, after which the proceed-  
15 ings were resumed as follows:)

16  
17  
18  
19  
20  
21  
22  
23  
24  
25



1 MARSHAL OF THE COURT: The International Military  
2 Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. OKAMOTO.

4 MR. T. OKAMOTO: I shall read from page 2,  
5 item 5, of exhibit 241.

6 "Since the beginning of the revolution  
7 which has shattered China into parts, all of what were  
8 called, under the Manchu Dynasty, dependencies of the  
9 Empire have been lost to the Republic. Over none of  
10 these former dependencies has China any longer any  
11 control. Tibet is independent; Chinese Turkestan is  
12 completely cut off from contact with China proper;  
13 Outer Mongolia became many years ago a part of the  
14 Soviet Union. Only Manchuria has remained down to  
15 the last year a part of China -- a part by measure of  
16 contact and association under the nominal sovereignty  
17 of that country. To say that Manchuria was under the  
18 full sovereignty of China would be a distortion of  
19 the actual and historic facts. Now this territory  
20 has gone; it has become an independent state."

21 I skip to page 6, item 5:

22 "In this connection, let me say a word re-  
23 garding the population of Manchoukuo. A false im-  
24 pression has been given to the world by the Lytton  
25 Report on this subject. There were no authentic

1 statistics upon which the Commission could base its  
2 view. No reliable Chinese census has ever been taken,  
3 even of China Proper, and any figures placed before  
4 the Commission by the Chinese authorities could not  
5 be regarded as dependable. For many years, the racial  
6 term 'Chinese' has been applied, particularly by  
7 foreigners, including the Japanese, to most of the  
8 people of the Chinese Empire. But this laxity in  
9 precise expression should not be taken to mean that  
10 Manchus and Mongols, or even the people of China  
11 Proper, are all of a single racial stock.

12 "The majority of the people of Manchoukuo  
13 are distinctly different from those of China. Even  
14 the people of North China, from the provinces of  
15 Shantung and Hopei, who have migrated to Manchuria to  
16 an extent of several millions in recent years, are  
17 strikingly different from those of other Chinese  
18 provinces, different from those of the Yangtze Valley,  
19 more different from those of South China, radically  
20 different from those of Western China, different in  
21 physical appearance, different in many of their cus-  
22 toms and in some cases even in their language. But  
23 even these immigrants who have gone from China to Man-  
24 churia in recent years do not form the bulk of the  
25 population. They form probably but a tenth, and at

1 most, but a fifth of it. The great body of the popu-  
2 lation can be properly described as Manchurian. It  
3 is formed by descendants of the old Manchu stock, by  
4 the old Chinese stock which affiliated itself with  
5 the Manchus in former years, and by Mongols. The  
6 great majority of these people have never lived in  
7 China and have no such attachment with that country  
8 as the Lytton Report describes. Here the Report was  
9 clearly in error."

10 THE PRESIDENT: Brigadier Nolan.

11 BRIGADIER NOLAN: Mr. President, may I  
12 draw the attention of the Tribunal to certain paragraphs  
13 of exhibit 2431? Paragraph 9, on page 4, paragraph  
14 20, on page 11, and paragraph 22 on page 12.

15 THE PRESIDENT: Mr. OKAMOTO.

16 MR. T. OKAMOTO: We now offer defense document  
17 250-B into evidence. It is a statement of the Japan-  
18 ese Government to the League of Nations by virtue of  
19 paragraph 5, Article 16 of the Covenant. I wish to  
20 read only from page 17 to 20 of Part III, which deals  
21 with the impracticabilities of the Recommendations of  
22 the League.  
23

24 THE PRESIDENT: Brigadier Nolan.

25 BRIGADIER NOLAN: If it please the Tribunal,  
we object to defense document 250-B in that it is once



1 more a recapitulation of the argument of the Japanese  
2 Government. Part I of the document deals with Japan-  
3 ese cooperation with the League of Nations. Part II  
4 points out errors in the report concerning the chief  
5 characteristics of the dispute, and Part III deals with  
6 the impracticabilities of the recommendations.

7 This Tribunal has said that it does not propose  
8 to turn itself into an inquiry determining the respec-  
9 tive merits of the Lytton Report and the Japanese reply.  
10 The prosecution submits that this document brings for-  
11 ward no new facts and ought to be rejected in its  
12 entirety.

13 MR. T. OKAMOTO: As the Tribunal may direct.

14 THE PRESIDENT: Have you any argument to  
15 offer?

16 The objection is upheld and the document  
17 rejected.

18 MR. T. OKAMOTO: We now offer defense document  
19 278 into evidence. It is an excerpt from the Japan-  
20 Manchukuo Year Book of 1937 and sets forth Japan's  
21 policy regarding abolition of extraterritoriality in  
22 the new state of Manchukuo.

23 THE PRESIDENT: Admitted on the usual terms.

24 CLERK OF THE COURT: Defense document No. 278  
25 will receive exhibit No. 2432.

1 (Whereupon, the document above referred  
2 to was marked defense exhibit 2432 and received  
3 in evidence.)

4 MR. T. OKAMOTO: I shall only read the  
5 first paragraph on page 1 and then skip to page 2.

6 "On August 9, 1934, the Japanese Government  
7 issued the following statement in the form of remarks  
8 by the authorities of the Foreign Office."

9 I skip to the third paragraph of page 2:

10 "Japan has for many years enjoyed in Manchuria  
11 extraterritorial rights, which under the conditions  
12 existing prior to the establishment of Manchoukuo, were  
13 important factors which were essential to Japanese prog-  
14 ress in Manchuria. However, with the development of  
15 Japanese policy towards Manchuria, these factors have  
16 gradually come to lose their importance.

17 "At the same time it has become necessary to  
18 relinquish these rights if Manchoukuo is to be allowed  
19 to attain full development.

20 "Such a relinquishment is also essential for  
21 real harmony between the Manchoukuo and Japanese nations,  
22 and for the strengthening of the friendly and indivisible  
23 relationship between the two countries which is re-  
24 quired if full progress of Japanese nationals in  
25 Manchoukuo is to be made possible as well as assured.

1 "As for the South Manchuria Railway zone, it  
2 was obtained by our country in the Russo-Japanese war  
3 at the risk of our national fortune.

4 "Since then for 30 years it has been adminis-  
5 tered with untiring energy.

6 "Needless to say, it has formed the basis  
7 of Japanese development in Manchuria.

8 "Since the foundation of Manchoukuo, it has  
9 become necessary to readjust and transfer Japan's admin-  
10 istrative right in the railway zone gradually, owing to  
11 the new situation arising as a result of the establish-  
12 ment of the new State.

13 "The Japanese Government, consequently, at a  
14 cabinet meeting on August 9, 1934, decided upon the  
15 following principles concerning the relinquishment of  
16 extraterritoriality and the readjustment and transfer  
17 of administrative rights in the S.M.R. zone, and is  
18 planning to devise concrete measures to be carried out  
19 step by step:

20 "(a) In accordance with the spirit of past  
21 agreements and in step with the improvement of various  
22 systems and facilities in Manchoukuo, Japanese extra-  
23 territorial rights in Manchoukuo shall be relinquished  
24 gradually so as to avoid any sudden change in the life  
25 of our nationals in that country.



1 "In relinquishing such rights special considera-  
2 tion will be given to the desire to see a greater devel-  
3 opment of the Japanese citizens throughout the whole  
4 of Manchoukuo and to the necessity of a smooth execu-  
5 tion of Japanese policy towards Manchoukuo.

6 "(b) The S.M.R. zone itself will of course  
7 be retained by Japan, but Japan's administrative  
8 rights in the said zone shall be readjusted and trans-  
9 ferred in view of their connection with the cession  
10 of extraterritoriality mentioned above.

11 "Such readjustment and transfer shall be under-  
12 taken as improvements are made in the various systems  
13 and facilities of Manchouko, and in step with the grad-  
14 ual retrocession of extraterritorial rights and in  
15 accordance with the nature of each matter to be affec-  
16 ted thereby.

17 "Finally a word must be added here that the  
18 lease of the Kwantung territory is a very different  
19 matter, in origin as well as nature, from the adminis-  
20 trative rights within the S. M. R.

21 "Consequently, it is obvious that a readjust-  
22 ment and transfer of these rights will have no bearing  
23 or connection whatsoever upon the question of the lease  
24 of the Kwantung Territory."  
25

That is the end of the reading.

NB 19,681  
NOTE:

The attached pages are corrected  
pages and should be substituted for the  
corresponding pages in the record.

1           We now offer defense document 382 into evi-  
2       dence. It is to show de facto recognition of Manchukuo  
3       by Russia. It is an agreement between the Navigation  
4       Bureau at Harbin, Manchukuo, and the Navigation  
5       Bureau at Amur, U.S.S.R., concerning improvement of  
6       navigation and was signed on September 4, 1934.

7           THE PRESIDENT: Brigadier Nolan.

8           BRIGADIER NOLAN: It if please the Tribunal,  
9       we object to defense document 382, which purports to  
10      be an agreement in respect of navigation. In our  
11      submission, an agreement concerning a matter of this  
12      kind can have no bearing on the issues before the  
13      Tribunal.

14          MR. T. OKANOTO: This agreement will show  
15      the understanding between Manchukuo and the U.S.S.R.  
16      But we do not offer to read it into evidence, simply  
17      submitted in evidence.

18          THE PRESIDENT: Agreements with de facto  
19      governments are common enough. As one of my colleagues  
20      observes, it is cumulative, as there was an acknow-  
21      ledgment of Manchukuo. This was proved by exhibit 2428.  
22      However, a majority of the Tribunal admit this docu-  
23      ment.

24               We overrule the objection. It is admitted on  
25      the usual terms.



MINAMI

1 J I R O M I N A M I, one of the accused, being  
2 first duly sworn, testified through Japanese  
3 interpreters as follows:

4 THE PRESIDENT: Mr. Tavenner.

5 MR. TAVENNER: If your Honor please, we have  
6 been informed by the defense counsel that the present  
7 witness, who is one of the accused, will testify only  
8 regarding the general phase now under consideration  
9 and that the defense intends to produce the witness  
10 at least on one other occasion in later phases of the  
11 case. We think as a matter of procedure that we should  
12 object to the division of the accused's testimony  
13 during the phases of the case. We would be very much  
14 opposed to cross-examining him piecemeal. I assume  
15 the Tribunal would not compel us to cross-examine even  
16 in the event he is permitted to testify now.

17 THE PRESIDENT: The Tribunal have an unlimited  
18 right to examine. We are not restricted by any  
19 federal rule. Our authority to examine is not to be  
20 identified with that of the prosecution or of the  
21 defense but is something entirely independent. How-  
22 ever, I can see that if the federal rule is applied  
23 it may seriously restrict cross-examination, but  
24 that could be said of cross-examination by the defense  
25 of prosecution's witnesses also. The prosecution

MINAMI

1 asked for this division. It is very difficult to deny  
2 it to the defense. But it may throw on the Tribunal  
3 a function ordinarily discharged by the prosecution;  
4 that is the function of subjecting the witness to a  
5 thorough and complete examination.

6 MR. TAVENNER: As to the question of cross-  
7 examination, I am not familiar with any rule that  
8 requires the prosecution to cross-examine before an  
9 accused has fully completed his testimony.

10 THE PRESIDENT: I haven't suggested otherwise.

11 MR. TAVENNER: Yes.

12 THE PRESIDENT: I do suggest that if he is  
13 examined piecemeal like this you may be seriously  
14 restricted. We will hear what you both have to say  
15 because we must confer about this; it is so important.

16 MR. TAVENNER: I have raised this question  
17 regarding cross-examination in order to show that by  
18 a procedure of this kind as to an accused that it is  
19 bound to result in confusion because we do not feel  
20 that the Tribunal will insist upon our exhausting  
21 our right of cross-examination in a piecemeal fashion.  
22 We haven't raised the question of division as to a  
23 witness proper, but an accused stands in a different  
24 situation in regard to that. Of course, should  
25 defense counsel desire to examine the accused fully

NOTE:

The attached pages are corrected  
pages and should be substituted for the  
corresponding pages in the record.



author knew to be so.

The prosecution objects to this document on the ground that we have objected to excerpts from writings of a like character containing as they do the particular and personal opinions of the author.

THE PRESIDENT: By a majority the Court upholds the objection and rejects the document.

1 that this kind of evidence cannot be found in any  
2 other varieties of documents now in our possession.

3 May I also call the attention of the Tribunal --

4 THE PRESIDENT: By a majority the Court re-  
5 jects the document and upholds the objection.

6 MR. T. OKAMOTO: We now offer in evidence  
7 defense document 177.

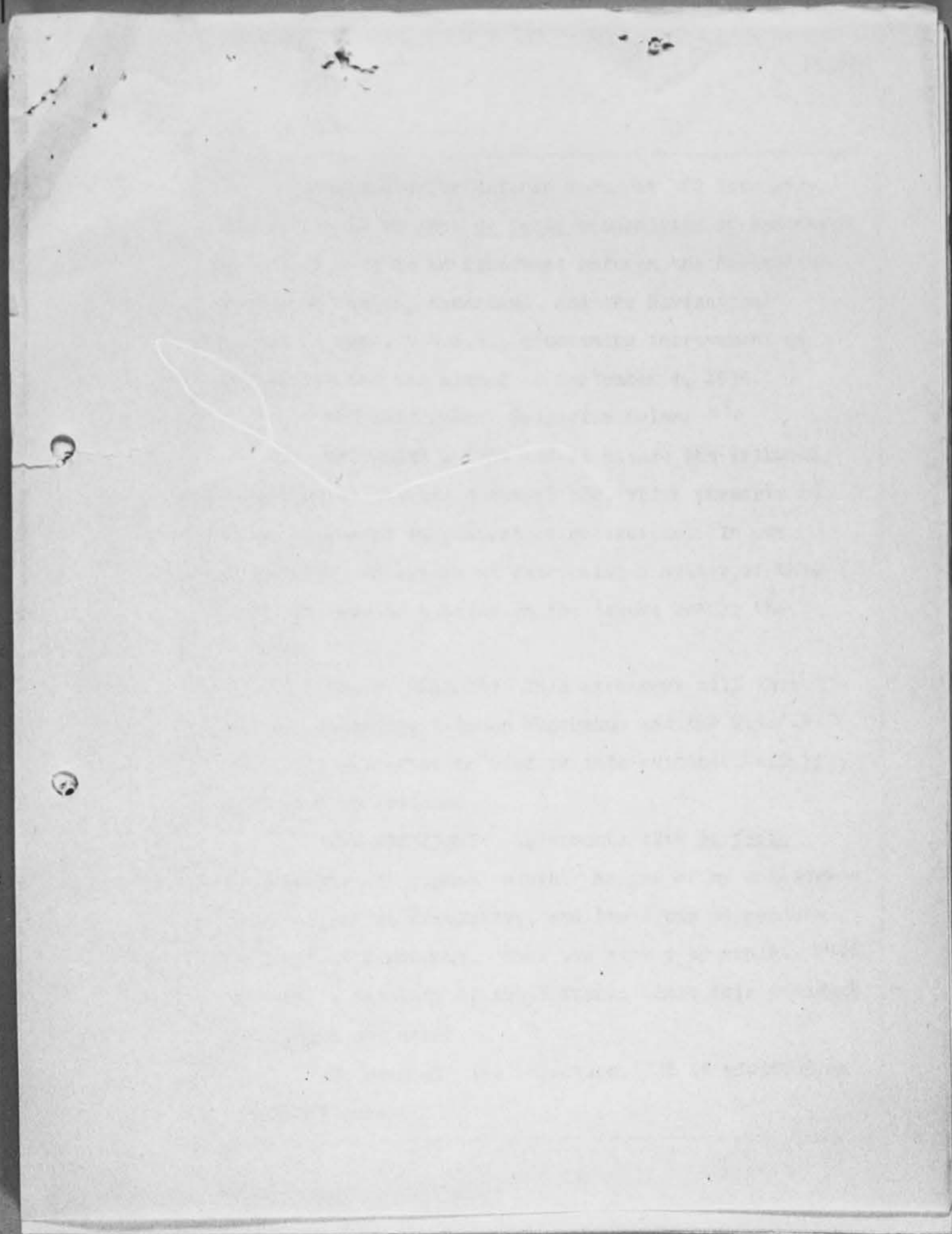
8 THE PRESIDENT: Apparently there is no ob-  
9 jection.

10 MR. T. OKAMOTO: These excerpts are from  
11 Sir Reginald Johnston's book entitled "Twilight in  
12 the Forbidden City", and he refers on page 262 to the  
13 Lytton Report statement that the Manchurian --

14 THE PRESIDENT: Brigadier Nolan.

15 BRIGADIER NOLAN: I think I should object  
16 at this point otherwise the document will be in the  
17 record in its entirety.

18 This document commences by setting out what  
19 might have happened if certain other things which  
20 didn't happen had happened, as will be demonstrated  
21 by looking at the first five lines of the first page  
22 of the document. It then goes on to discuss the  
23 Lytton Report by a statement quoting an excerpt from  
24 page 262 which begins: "Knowing this to be so, I have  
25 found it difficult--" there is no indication what the





1 We now offer defense document 382 into evi-  
2 dence. It is to show de facto recognition of Manchukuo  
3 by Russia. It is an agreement between the Navigation  
4 Bureau at Harbin, Manchukuo, and the Navigation  
5 Bureau at Amur, U.S.S.R., concerning improvement of  
6 navigation and was signed on September 4, 1934.

7 THE PRESIDENT: Brigadier Nolan.

8 BRIGADIER NOLAN: If it please the Tribunal,  
9 we object to defense document 382, which purports to  
10 be an agreement in respect of navigation. In our  
11 submission, an agreement concerning a matter of this  
12 kind can have no bearing on the issues before the  
13 Tribunal.

14 MR. T. OKAMOTO: This agreement will show  
15 the understanding between Manchukuo and the U.S.S.R.  
16 But we do not offer to read it into evidence, simply  
17 submitted in evidence.

18 THE PRESIDENT: Agreements with de facto  
19 governments are common enough. As one of my colleagues  
20 observes, it is cumulative, and there was no acknow-  
21 ledgment of Manchukuo. This was proved by exhibit 2428.  
22 However, a majority of the Tribunal admit this document  
23 and reject the other.

24 We overrule the objection. It is admitted on  
25 the usual terms.

1 CLERK OF THE COURT: Defense document No. 382  
2 will receive exhibit No. 2433.

3 (Whereupon, the document above referred  
4 to was marked defense exhibit No. 2433 and re-  
5 ceived in evidence.)

6 MR. T. OKAMOTO: However, we will not read  
7 it.

8 THE PRESIDENT: I should have said we accept  
9 the document.

10 BRIGADIER NOLAN: May I be permitted to refer  
11 to exhibit 2433, which has just been marked, and draw  
12 the attention of the Tribunal to the names of the  
13 signatories, to be found on pages 3 and 4 of the docu-  
14 ment? The Tribunal will note that some members  
15 appear at least to be Japanese names.

16 MR. T. OKAMOTO: We now offer defense document  
17 70 into evidence. It is the agreement between Man-  
18 choukuo and the U.S.S.R. for the cession to Manchoukuo  
19 of the rights of the U.S.S.R. in the Chinese Eastern  
20 Railway, signed March 23, 1935. We offer this to show  
21 de facto recognition by Russia of the new state of  
22 Manchoukuo. However, we will not read this into evi-  
23 dence.  
24

25 THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: Your Honor, we object to

1 this document on the ground that the fact that such  
2 an agreement took place has already been proved by prose-  
3 cution exhibit 443, and the terms of the agreement, in  
4 our submission, are immaterial.

5 THE PRESIDENT: You don't propose to read it?

6 MR. T. OKAMOTO: No.

7 THE PRESIDENT: By a majority the Court  
8 rejects the document and upholds the objection.

9 MR. T. OKAMOTO: We now offer defense document  
10 295 into evidence. It is the treaty of amity between  
11 Manchoukuo and Germany, signed May 12, 1938. We will  
12 not read this document, and offer it as proof of recog-  
13 nition of the new state by Germany.

14 MR. COMYNS CARR: Again in this case, your  
15 Honor, the fact has been proved by prosecution exhibit  
16 242, and even if it is not proposed to read the docu-  
17 ment, it is, in my submission, repetitious.

18 THE PRESIDENT: The last decision covers  
19 this. The objection is upheld and the document re-  
20 jected.

21 Why don't you seek agreement on these points?  
22 In any view, it is an unnecessary waste of material and  
23 labor.

24 MR. T. OKAMOTO: Our purpose in offering this  
25 evidence was different from that of the prosecution.



1 THE PRESIDENT: This material is being re-  
2 jected as cumulative, as unnecessary proof.

3 MR. T. OKAMOTO: Then, may I offer defense  
4 document 294 into evidence? It is the notes exchanged  
5 concerning the recognition of Manchoukuo by the kingdom  
6 of Rumania on December 1, 1940.

7 THE PRESIDENT: Any objection?

8 MR. COMYNS CARR: Your Honor, this fact has  
9 not been proved by the prosecution, and if the Tribunal  
10 considers it material to note it, we can't object to  
11 the document.

12 THE PRESIDENT: Why not admit the fact and keep  
13 all this material out of the record?

14 MR. COMYNS CARR: If we had been asked to do  
15 so we would have, your Honor, as we have been asked to  
16 admit.

17 THE PRESIDENT: You can admit it now. We  
18 will accept your admission, Mr. Comyns Carr.

19 MR. COMYNS CARR: I would just call attention  
20 to two points about the document. First, it is dated  
21 December, 1940. Second, although it purports to be  
22 an agreement between Rumania and Manchukuo, it was exe-  
23 cuted in Tokyo.

24 Your Honor, I am willing to admit those facts,  
25 that there was such an agreement executed in Tokyo on

1 the 3rd of December 1940, and thus save the document  
2 encumbering the record.

3 MR. T. OKAMOTO: May I understand that the  
4 prosecution admits the recognition of Manchukuo by  
5 Rumania? The defense will try to allow the stipula-  
6 tion of this kind of evidence later on, your Honor.

7 I shall not read this document.

8 THE PRESIDENT: I think you ought to withdraw  
9 it, because it is unnecessary.

10 MR. T. OKAMOTO: Then, I shall withdraw the  
11 document.

M  
O  
R  
S  
E  
&  
W  
O  
L  
F

1 We now offer defense document 61 into  
2 evidence. It is a "Draft of the U.S.-Japanese  
3 Understanding, dated April 16, 1941."

4 THE PRESIDENT: Mr. Tavenner.

5 MR. TAVENNER: I object to the introduction  
6 of this document. It is the same document as  
7 prosecution exhibit No. 1059 with the exception  
8 of the title and two sentences, and, notwithstanding  
9 the title in the defense document No. 61, it is not  
10 actually an agreement between the U.S. and Japan.  
11 It is, in fact, nothing more than unofficial  
12 negotiations that were conducted between certain  
13 private Japanese and American citizens. All of that  
14 is fully explained in the record at the place where  
15 document 1059 was introduced in evidence.

16 THE PRESIDENT: What are the two sentences?

17 MR. TAVENNER: I would like to point out  
18 the entire changes or differences in the document.  
19 The title in exhibit 1059 is "Proposal presented to  
20 the Department of State through the medium of  
21 private American and Japanese individuals on April  
22 9, 1941," whereas, the title in defense document 61  
23 is "Draft of the U.S.-Japanese Understanding, dated  
24 April 16, 1941 (Incoming Telegram No. 234, dated  
25 April 17.)"



1           The following sentence in exhibit 1059  
2 is omitted in the defense document 61, page 400,  
3 quote<sup>14</sup> from "Foreign Relations of the U.S.-Japan,  
4 1931-41," the last three lines:

5           "Should the Chiang-Kai-Chek regime reject  
6 the request of President Roosevelt, the United States  
7 Government shall discontinue assistance to the Chinese."

8           The other change is at page 402, paragraph  
9 VII (c):

10           "c. The Government of Japan requests the  
11 friendly and diplomatic assistance of the Government  
12 of the United States for the removal of Hongkong and  
13 Singapore as doorways to further political encroach-  
14 ment by the British in the Far East."

15           Except for the title and the two sentences  
16 omitted in defense document 61 they are identical.

17           THE PRESIDENT: If you agree, Mr. OKAMOTO,  
18 the document may be withdrawn.

19           MR. TAVENNER: Exhibit 1059 is the original  
20 document and the original document was compared with  
21 the defense document 61 in making this summary for me.

22           THE PRESIDENT: We will hear Mr. OKAMOTO.

23           MR. T. OKAMOTO: As the prosecutor pointed  
24 out the document 61 is different from the prosecution's  
25 exhibit. In the first place, the date and also by

1 showing that this document is an incoming telegram  
2 of the Foreign Office, which fact is evidenced by  
3 the certificate of source and authenticity attached  
4 on the back, and the paragraph three on page three  
5 of this document showing the recognition of Manchukuo  
6 by the United States as one of the conditions of  
7 this agreement. In particular, item h on page four,  
8 and as this telegram received by the Foreign Office  
9 is the basis of negotiations between the United  
10 States and Japan at that time, we should like to  
11 offer this as evidence brought out from the prosecution  
12 exhibit as showing the attitude of the United States  
13 towards Manchukuo.

14 THE PRESIDENT: You can still rely on exhibit  
15 No. 1059. There is no need to have an additional  
16 document. The fact is that you admit what Mr.  
17 Tavenner says about the difference in the two documents.

18 MR. T. OKAMOTO: We do not know anything  
19 about exhibit 1059, but we do know that defense  
20 document 61 is an official document.

21 MR. TAVENNER: May I reply to the last  
22 statement?

23 THE PRESIDENT: The original is in evidence;  
24 the original. The document is rejected and the  
25 objection is upheld.

1 MR. T. OKAMOTO: We now offer defense  
2 document 489 into evidence. It is the speech of  
3 Mr. HIROTA as Foreign Minister at the House of  
4 Representatives on January 21, 1936, published in  
5 the Official Gazette of January 22, 1936 of the  
6 proceedings of the 68th Diet Session.

7 THE PRESIDENT: Admitted on the usual terms.

8 CLERK OF THE COURT: Defense document No.  
9 489 will receive exhibit No. 2434.

10 (Whereupon, the document above re-  
11 ferred to was marked defense exhibit No.  
12 2434 and received in evidence.)  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



1 MR. T. OKAMOTO: I read, starting with the  
2 last paragraph on page 1 of the exhibit:

3 "It gives us a great delight that our ally,  
4 the State of Manchukuo is making steady progress and  
5 development year after year. As her relations with  
6 our Empire have become ever closer, we are intent on  
7 contributing to her independence and development, by  
8 gradual abolition of the extra territoriality which  
9 we are now enjoying in that country and the gradual  
10 adjustment of our administrative right in the South  
11 Manchurian Railway zone. The close and inseparable  
12 relations between our Empire and Manchukuo can be seen  
13 in the fact that the Joint Defense Pact was concluded  
14 when Manchukuo was founded and that the Japan-Manchukuo  
15 Economic Joint Committee has come to be established,  
16 because we considered it natural that the two countries  
17 should cooperate in the economic field as well. More-  
18 over, I believe that in order to secure that objective  
19 she must endeavor, on her part, to enhance her inter-  
20 national position, and at the same time to promote  
21 friendly relations with the neighboring countries.  
22 The stately existence of this newly established  
23 Manchukuo and her sound development truly constitute  
24 the fundamental conditions of the virtual stabiliza-  
25 tion of East Asia. In other words, she should make

1 her utmost efforts to adjust the relations between  
2 Japan, Manchukuo, and China on one hand, and to act  
3 with prudence in the relations between Japan,  
4 Manchukuo, and Soviet Russia on the other hand.

5 "In the first place, as to the relations  
6 between Japan, Manchukuo, and China, though a gradual  
7 improvement is noticed, it cannot be said that they  
8 have been restored to the normalcy. Naturally, we  
9 keenly feel the necessity of solidifying the foundation  
10 upon which the stability of East Asia rests by improv-  
11 ing the relations among three countries till they are  
12 perfectly normalized."

13 Now Mr. Books will call a witness to the  
14 stand.

15 MR. BROOKS: If the Tribunal please, I would  
16 like to call the defendant MINAMI to the stand.  
17  
18  
19  
20  
21  
22  
23  
24  
25

MINAMI

1 J I R O M I N A M I, one of the accused, being  
2 first duly sworn, testified through Japanese  
3 interpreters as follows:

4 THE PRESIDENT: Mr. Tavenner. .

5 MR. TAVENNER: If your Honor please, we have  
6 been informed by the defense counsel that the present  
7 witness, who is one of the accused, will testify only  
8 regarding the general phase now under consideration  
9 and that the defense intends to produce the witness  
10 at least on one other occasion in later phases of the  
11 case. We think as a matter of procedure that we should  
12 object to the division of the accused's testimony  
13 during the phases of the case. We would be very much  
14 opposed to cross-examining him piecemeal. I assume  
15 the Tribunal would not compel us to cross-examine even  
16 in the event he is permitted to testify now.

17 THE PRESIDENT: The Tribunal have an unlimited  
18 right to examine. We are not restricted by any  
19 federal rule. Our authority to examine is not to be  
20 identified with that of the prosecution or of the  
21 defense but is something entirely independent. How-  
22 ever, I can see that if the federal rule is applied  
23 it may seriously restrict cross-examination, but  
24 that could be said of cross-examination by the defense  
25 of prosecution's witnesses also. The prosecution



MINAMI

1 asked for this division. It is very difficult to deny  
2 it to the defense. But it may throw on the Tribunal  
3 a function ordinarily discharged by the prosecution;  
4 that is the function of subjecting the witness to a  
5 thorough and complete examination.

6 MR. TAVENNER: As to the question of cross-  
7 examination, I am not familiar with any rule that  
8 requires the prosecution to cross-examine before an  
9 accused has fully completed his testimony.

10 THE PRESIDENT: I haven't suggested otherwise.

11 MR. TAVENNER: Yes.

12 THE PRESIDENT: I do suggest that if he is  
13 examined piecemeal like this you may be seriously  
14 restricted. We will hear what you both have to say  
15 because we must confer about this it is so important.

16 MR. TAVENNER: I have raised this question  
17 regarding cross-examination in order to show that by  
18 a procedure of this kind as to an accused that it is  
19 bound to result in confusion because we do not feel  
20 that the Tribunal will insist upon our exhausting  
21 our right of cross-examination in a piecemeal fashion.  
22 We haven't raised the question of division as to a  
23 witness proper, but an accused stands in a different  
24 situation in regard to that. Of course, should  
25 defense counsel desire to examine the accused fully

MINAMI

1 at this time we could offer no objection and do not  
2 desire to offer any. But solely from the standpoint  
3 of efficient trial procedure we felt that the objec-  
4 tion should be made to the practice of testifying  
5 by installments.

6 MR. BROOKS: Mr. President and Members of  
7 the Tribunal:

8 I have called MINAMI as a witness because it  
9 is important in this phase of the case since he was  
10 the War Minister at the time of the outbreak of the  
11 Mukden Incident up until December 10, I believe it  
12 was, 1931. I had not intended to read all of this  
13 affidavit. The reason I had not intended to read all  
14 of the affidavit was because there are one or two  
15 paragraphs that deal with later matters that could be  
16 taken up in the individual phase. However, since  
17 that I have decided to read the entire affidavit at  
18 this time because the other parts are very small,  
19 but I also desire to call this defendant in the  
20 individual case after his other witnesses have been  
21 put on if I see fit to do so. Speaking as an individu-  
22 al defense counsel for MINAMI, I do not desire to  
23 limit cross-examination by the Court or by the prosecu-  
24 tion on anything they desire to go into.

25 THE PRESIDENT: Colonel Warren.

MINAMI

1 MR. WARREN: If the Tribunal please, speak-  
2 ing on behalf of my client that may later desire to  
3 follow a procedure similar to this, we cannot agree  
4 with Mr. Brooks. The procedure we have asked the  
5 Court to follow is the procedure that the prosecution  
6 requested.

7 THE PRESIDENT: If the defense disagree, they  
8 had better confer during the luncheon adjournment.  
9 We will adjourn until half past one.

10 (Whereupon, at 1200, a recess was  
11 taken.)  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



MINAMI

## AFTERNOON SESSION

The Tribunal met, pursuant to recess, at 1335.

MARSHAL OF THE COURT: The International Military Tribunal for the Far East is now resumed.

- - -

J I R O M I N A M I, one of the accused, resumed the stand and testified through Japanese interpreters as follows:

THE PRESIDENT: Colonel Warren.

MR. WARREN: If the Tribunal please, at the suggestion of the Tribunal, defense counsel have conferred during the noon hour regarding the question before the Tribunal. I should like, in argument, to read from "A Manual for Courts-Martial, U. S. Army, 1928, corrected to April 20, 1943" which depicts our present federal rule and follows it exactly. I shall read from paragraph 120 d on page 125. It will be noted that the first two sentences do not apply because of Charter limitations under the Charter of this Tribunal.

Quoting: "The accused is at his own request, but not otherwise, a competent witness. His failure to make such request shall not create any presumption

G  
r  
e  
e  
n  
b  
e  
r  
g  
&  
B  
a  
r  
t  
o  
n

MINAMI

1 against him. Upon taking the stand as a witness he  
2 occupies no exceptional status. The same rules as to  
3 the admissibility of evidence, privilege of the wit-  
4 ness, impeaching of his own credit, etc., will apply  
5 to him as to any other witness." That applies, your  
6 Honor, to his direct examination.

7 On page 127, paragraph 121 b, I will read  
8 as to what applies to his cross-examination.

9 Quoting: "An accused person taking the  
10 stand as a witness becomes subject to cross-examina-  
11 tion like any other witness. So far as the latitude  
12 of the cross-examination is discretionary with the  
13 court, a greater latitude may properly be allowed in  
14 his cross-examination than in that of other witnesses.  
15 When the accused testifies in denial or explanation  
16 of any offense, the cross-examination may cover the  
17 whole subject of his guilt or innocence of that of-  
18 fense. Any fact relevant to the issue of his guilt  
19 of such offense or relevant to his credibility as a  
20 witness is properly the subject of cross-examination.  
21 The accused cannot avail himself of his privilege  
22 against self-incrimination to escape proper cross-  
23 examination. Where an accused is on trial for a  
24 number of offenses and on direct examination has tes-  
25 tified about only a part of them, his cross-examina-

MINAMI

1       tion must be confined to questions of credibility  
2       and matters having a bearing upon the offense about  
3       which he has testified."

4               It is my personal opinion, your Honor,  
5       which is shared by others, that we do not have the  
6       right to waive the fundamental right of the accused  
7       in waiving cross-examination -- I mean in waiving  
8       the right not to cross-examine on matters not rele-  
9       vant to the charge about what he is testifying.

10              THE PRESIDENT: You meant that counsel  
11       could not waive the accused's right to have the  
12       cross-examination restricted.

13              MR. WARREN: Exactly, your Honor. We  
14       feel that, your Honor, inasmuch as the prosecution  
15       selected the method of presenting their case by  
16       phases and we followed suit, the rules necessarily  
17       applicable to carry out that plan should apply to us  
18       as well as to the prosecution. We feel that, inas-  
19       much as an accused occupies no special status as a  
20       witness, cross-examination should be limited to the  
21       scope of the direct which is contained in the affi-  
22       davit, even to the question of credibility to which  
23       we were limited.

24              Other counsel have requested to be heard on  
25       this; and Mr. Logan, I think, desires to say some-



MINAMI

1 thing at the request of the American and Japanese  
2 defense counsel.

3 THE PRESIDENT: Mr. Logan.

4 MR. LOGAN: If the Tribunal please, from  
5 what the prosecution has said and from the personal  
6 offer which was made before lunch, there are two  
7 questions to be considered: One is as to whether or  
8 not the defense would have the right to call and re-  
9 call the accused in different phases of the case,  
10 and the second is whether or not the restriction on  
11 cross-examination to the extent and scope of the  
12 affidavit -- whether or not that rule shall be  
13 applied to the accused.

14 Perhaps both of these questions could be  
15 answered if the true view of an accused on a stand  
16 is to be considered. An accused on a stand may be  
17 an accused as to the prosecution, but he is only a  
18 witness as to all the other accused. Therefore, as  
19 a witness, we should be permitted to put him on in  
20 various phases and limit the prosecution's cross-  
21 examination to his affidavit.

22 With respect to the second point, if an  
23 accused is permitted unrestricted cross-examination  
24 by the prosecution, it would be treating him in a  
25 manner which would subject him to further redirect

MINAMI

1 examination by any of the other accused's attorneys  
2 whom he may mention in his cross-examination, and  
3 this would involve matters for which the accused is  
4 not called and for which many of the other defense  
5 attorneys would not know the matters on which he is  
6 going to testify because it is not mentioned in his  
7 affidavit. Also, if the prosecution were permitted  
8 unrestricted cross-examination of an accused, the  
9 attorneys for the other accused whom that particular  
10 accused may mention in his cross-examination, would  
11 also have, perhaps, an unrestricted right of re-  
12 direct examination. In this case it would be in-  
13 terminable. Furthermore, in using these accused as  
14 witnesses, if any change is made in the rule at this  
15 time, we feel it would be prejudicial to the interest  
16 of the other accused other than the one who is on  
17 the stand.

18 For these reasons we believe the rules that  
19 have been adopted, largely by the Court up to the  
20 present time, should be continued and that we should  
21 be permitted to call these accused in various phases;  
22 and, secondly, that the cross-examination should be  
23 restricted to the direct.

24 Mr. Lazarus would also like to say a few  
25 words.

MINAMI

1 THE PRESIDENT: Mr. Lazarus.

2 MR. LAZARUS: With reference to the China  
3 phase and the Russian phase which will follow, if  
4 it please the Tribunal, we are considering putting  
5 on several of the accused to testify only as to  
6 matters pertinent to those particular phases. They  
7 will testify by affidavit. The prosecution will  
8 have ample notificztion and will have time to be  
9 prepared for suitable cross-examination. If, at  
10 that time, a complete cross-examination on all mat-  
11 ters in the Indictment were to be permitted, we  
12 would not finish the China phase for, perhaps, a  
13 period of months if the chain that Mr. Logan pointed  
14 out to the Court before me were to be followed.

15 As you have very properly pointed out, Mr.  
16 President, this is a court, not a jury; and the  
17 prosecution's fear, that, perhaps, by introducing  
18 the evidence of the accused piecemeal the evidence  
19 could not properly be followed or clearly be fol-  
20 lowed, holds no water. On the contrary, we feel that,  
21 if the accused were to take the stand and testify as  
22 to the matters relevant to these phases at the time  
23 the majority of the evidence pertinent to those  
24 phases were being put on, the Court would be able to  
25 follow all the evidence much more clearly.



MINAMI

1           In conclusion, and very important I think,  
2 we sincerely feel that we will save time if we can  
3 allow the accused to testify now in these phases as  
4 their particular part of the evidence arises rather  
5 than have them rehash and go through the entire  
6 matter later.

W  
h  
a  
l  
e  
n  
&  
L  
u  
d  
a

1 THE PRESIDENT: Mr. Tavenner,

2 MR. TAVENNER: May I be permitted to reply to  
3 each of the three counsel?

4 THE PRESIDENT: Well, the question is whether  
5 a fair trial would be denied if we allowed each  
6 accused to give evidence only once and then in his  
7 individual case. We have heard nothing to the con-  
8 trary.

9 Mr. Logan pointed out some grave objections  
10 if you exercised the right to unlimited cross-  
11 examination on the phases. The defense arguments  
12 apart from his have been directed to saving time  
13 and also to our convenience. But how will the accused  
14 be prejudiced if they are required to give evidence  
15 once for all time after the phases have been dealt with?  
16 I think the Tribunal is prepared to hear you both on  
17 that aspect.

18 MR. WARREN: If the Tribunal please, the  
19 consensus seems to be that there would not be any  
20 prejudice to the particular accused, but there would  
21 be a prejudice to the entire, over-all case in that it  
22 would affect the continuity of our trial. In so far  
23 as presenting our phases chronologically, consistently,  
24 and concisely are concerned, it would be of great  
25 benefit to the accused -- I mean, to the defense, to

MINAMI

1 use these men as witnesses and view them as witnesses  
2 and not as accused at this time.

3 It has been pointed out further by counsel  
4 that due to the lapse of time in some instances we  
5 will be unable to get other witnesses who would fit  
6 into the particular breach that we have fitted them  
7 into in the preparation of our case.

8 MR. LAZARUS: Mr. President, this case is so  
9 vast and so complex that we think it is to the  
10 definite benefit of the accused to be able to tell  
11 their stories in part as each main part arises, rather  
12 than have to take the stand and in one or two or three  
13 consecutive days try to cover an entire indictment  
14 covering seventeen years, seventeen cabinets, and many,  
15 many complex parts which, as you know, have already  
16 been introduced in evidence.

17 All the accused will not take the stand in  
18 this manner; only a few will. And those few who are  
19 considering taking the stand in this manner definitely  
20 do feel that it is to their advantage to be able to  
21 give their stories piecemeal within the phase then  
22 being presented and surrounded by all the appropriate  
23 evidence, both documentary and by affidavit and  
24 witnesses.  
25

THE PRESIDENT: Mr. Tavenner.



MINAMI

1 MR. TAVENNER: Your Honor, I think it is  
2 only necessary to refer to Mr. Warren's admission that  
3 in his opinion it would not be prejudicial to the  
4 defendants that they be required to testify only in  
5 the defense phase of the case.

6 THE MONITOR: Mr. Tavenner, in the last part,  
7 "only in the defense phase of the case," or "the  
8 defendant's phase"?

9 MR. TAVENNER: The defense phase of the case.

10 THE PRESIDENT: If Dr. UZAWA desires to  
11 address the Tribunal, he had better do so before you,  
12 Mr. Tavenner.

13 MR. TAVENNER: I am sorry, I did not know  
14 any other defense counsel desired to address the  
15 Tribunal.  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MINAMI

1 DR. UZAWA: I should like to just mention  
2 that this problem is such an important one, the Japan-  
3 ese counsels, the majority of the Japanese counsels  
4 agree with the opinions of Mr. Lazarus and Mr. Warren  
5 and Mr. Logan.

6 THE PRESIDENT: Mr. Tavenner.

7 MR. TAVENNER: As I started to say, Mr.  
8 Warren, counsel for the accused, has stated that in  
9 his opinion it would not be to the prejudice of the  
10 accused if they would be required to testify in what  
11 I term was the defense phase by which, of course, I  
12 mean the individual phase of the case which is to  
13 follow the special phases.

14 THE PRESIDENT: Colonel Warren's admission  
15 was not unqualified.

16 MR. TAVENNER: I would like also to call to  
17 the Tribunal's attention the argument made by Mr.  
18 Logan in which he described the extremely complicated  
19 situation that would arise as a result of cross-  
20 examination on limited testimony--

21 THE MONITOR: Mr. Tavenner, is that "on  
22 limited testimony" or "unlimited?"

23 MR. TAVENNER: On limited direct examination.  
24 It is cross-examination on limited direct examination.  
25

MINAMI

1 (Continuing) And the various problems that  
2 would arise from redirect examination. Considerable  
3 time could be consumed in outlining the various com-  
4 plicated situations that could arise. But it is cer-  
5 tainly not necessary to do this.

6 Now, the right of an accused to give testi-  
7 mony in piecemeal fashion would certainly be a con-  
8 cession on the part of the Tribunal--

9 THE PRESIDENT: We gave you the concession.  
10 That is no argument.

11 MR. TAVENNER: Pardon me, I hadn't finished  
12 the sentence -- which certainly would be exercised  
13 only in the event that it expedites the trial. And  
14 I think it is plain that just the reverse would be  
15 the effect.

16 We are not trying the phases, we are trying  
17 the accused. And if it is a matter of conflict between  
18 convenience in arranging evidence for the phases and  
19 in the expedition of the trial of the accused, there  
20 should be no hesitancy as to where the decision should  
21 be. This is not the situation mentioned by Mr. Warren  
22 where separate charges appear in an indictment and as  
23 to which the accused is appearing only in answer to  
24 one specific charge. The charge of conspiracy covers  
25 the entire field of the case.



MINAMI

1           We can see no reason why an accused could  
2 be prejudiced in any manner by requiring his testi-  
3 mony in one phase of the case, whatever phase the  
4 defense counsel desire to use that testimony.

5           That is all I have to say.

6           MR. BROOKS: May I reply to the last state-  
7 ment, your Honor, very briefly?

8           THE PRESIDENT: There is nothing new in the  
9 last statement.

10          MR. BROOKS: I have a witness on the stand,  
11 an accused on the stand, your Honor, and the point I  
12 want to reply to is that if other defendants are  
13 going to take the stand after this witness, when I am  
14 finished here, I would surely have the right to recall  
15 to answer any charges or counter-charges that might be  
16 made by other defendants when they take the stand at  
17 a later period.

18          THE PRESIDENT: The Court will adjourn to  
19 consider its decision.

20               (Whereupon, at 1420, a recess was  
21 taken until 1505, after which the proceedings  
22 were resumed as follows:)  
23  
24  
25

MINAMI

K  
a  
p  
p  
e  
a  
u  
&  
S  
p  
r  
a  
t  
t

1 MARSHAL OF THE COURT: The International  
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: By a majority the Tribunal  
4 has decided that an accused may give evidence at  
5 any time, but that he must give his evidence once  
6 for all time, that he cannot give it in sections  
7 in separate phases.

8 MR. BROOKS: Has there been any decision  
9 on the cross-examination, your Honor?

10 THE PRESIDENT: Would you care to consider  
11 the position? You may want to present an entirely  
12 different affidavit. We do not know.

13 MR. BROOKS: Under the ruling of the Court  
14 I ask leave to withdraw the witness from the stand  
15 so that he may be called at a later time.

16 THE PRESIDENT: The correct procedure is to  
17 stand him down until a later time.

18 He is stood down accordingly.

19 (Whereupon, the witness was  
20 excused.)

21 MR. BROOKS: I would also like to request,  
22 your Honor, to be heard in Chambers on the matter of  
23 whether I may call another accused as a witness in  
24 behalf of one of my defendants without **infringing**  
25 upon this right, as set out before the Court now, that

1 he can only be heard at one time.

2 THE PRESIDENT: Any such application and  
3 any submissions on it should be made here in Court,  
4 Captain Brooks.

5 MR. BROOKS: May we then defer that until  
6 the defense counsel, Japanese and American, have  
7 had a chance to confer and have a spokesman ap-  
8 pointed to present all of our views.

9 THE PRESIDENT: We think you will need some  
10 time about this, Captain Brooks; so we will adjourn  
11 now until half-past nine tomorrow morning.

12 (Whereupon, at 1508, an adjourn-  
13 ment was taken until Friday, 11 April 1947,  
14 at 0930.)

15 - - - -  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25